

REVIEW OF THE EXEMPTION PROVIDED UNDER PARAGRAPH 3 OF GATT 1994

US Response to Communication from Japan¹

The following communication, dated 28 June 2010 is being circulated at the request of the Delegation of the United States.

Question 1

In light of the fact that the exemption is a serious deviation from the fundamental principles of the GATT and that it has been maintained for as long as 15 years, further continuing this exemption will harm the consistency of the entire WTO legal framework. Furthermore, its continuation may be misused by other Members as an excuse for creating or maintaining their trade barriers. What is the view of the US on this point?

US response:

We note that paragraph 3 of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994") is very much part of the WTO legal framework and is necessarily consistent with it. Likewise, this paragraph reflects the balance of rights and obligations under the *Marrakesh Agreement Establishing the World Trade Organization*.

Question 2

It is assumed that the US Jones Act has the effect of increasing physical distribution costs to the users of US domestic maritime transportation, especially in cases where shipping is the only economically reasonable means of transportation. Moreover, maritime is the only sector that is influenced by this peculiar regulation, unlike other modes of transportation such as air, rail and road where foreign-made aircraft, rolling stock and trucks can be used without any such restrictions. This means that competitive conditions are seemingly distorted among those transportation modes, and therefore, not only does the Jones Act affect the US maritime industry, but also it may even have a distorting effect on world trade, contrary to the spirit of trade liberalization under the WTO. What is the view of the US on these points?

US response:

The United States believes it is useful to put in perspective the size of the US ocean going merchant fleet. The total carrying capacity of the world's ocean going merchant fleet in 2008 was

¹ WT/GC/W/616.

1,076,086,532 tons. Of that total, the US fleet accounted for 8,515,521 tons, or less than 1% (0.79%). Approximately 97 per cent of US foreign trade is carried on foreign vessels. These facts do not appear to support an assertion of distorting effects on world trade.

Question 3

With regard to the level of the shipbuilding and maintenance capacity that is essential for US national security, the US responded to Japan's questionnaire in 2007 that it had no quantitative criteria and that it only had qualitative criteria. Unless quantitative criteria or other concrete grounds are objectively shown, the US remains able in practice to make unilateral decisions to maintain this exemption, since there is a very large amount of room for arbitrary decisions on whether or not the exemption is necessary. What is the view of the US on this point? What actions have been taken or will be taken by the US for making these criteria clear and transparent?

US response:

Qualitative, not quantitative, assessments are made by the US Department of Defense in conjunction with the Department of Homeland Security and other national security agencies. As the nature of the threats has changed over the years, the assessment of the level of security needed, and the means to achieve that level of security, is constantly being examined and refined. We do not share Japan's belief that a quantitative assessment would be useful. Different challenges require a different response; these cannot be meaningfully quantified.

Question 4

With regard to "additional information on the use, sale lease or repair of relevant vessels covered by this exemption" as stipulated in paragraph 3(c), the response by the US to Japan's questionnaire on this point in 2007 was that the US did not have a source for this information. Since the US is required to provide such information annually pursuant to the said paragraph, the US should find and ensure the means in order to obtain the "additional information" and make a submission of such information, which is also essential to prevent undermining the credibility of the GATT and the WTO system. What actions have been taken or will be taken by the US on this point?

Answer

The United States wishes to clarify that it has been providing "additional information" identified in paragraph 3(c) of GATT 1994 together with its "detailed statistical notification." Paragraph 3(c) states that a Member whose measures are covered by the exemption "shall annually submit a detailed statistical notification consisting of a five-year moving average of actual and expected deliveries of relevant vessels *as well as additional information* on the use, sale, lease or repair of relevant vessels" (italics added). The United States has annually provided the "detailed statistical notification" relating to actual and expected deliveries. In addition, as part of the tables providing the data underlying that detailed statistical notification, the United States has submitted "additional information" relating to the use or sale of relevant vessels. The United States has tried to be clear in its most recent communication on where to find that information.

Concerning the "additional information" referred to by Japan, we would point out that the use of the vessel is already provided by US communications through the data field showing vessel type, such as offshore supply, crew boat, or tug. For example, the additional information provided by the United States on vessel deliveries for the five-year period through 2008 (WT/L/789) shows in the "type" data field that 12 crew boats, 36 offshore supply vessels, and 20 tugs were delivered and ordered from US shipyards during 2008. Information on the intended use of other vessels is similarly shown by vessel type, such as fishing vessels, crude oil tanker, etc.

In the same communication, the United States has also provided additional information on the sale or use of vessels delivered and expected to be delivered (ordered) in 2008 through the data fields showing vessel type, builder, owner, current manager, and operator. In the report for 2008, owner and parent company data is updated to reflect any sale or lease transactions that may have taken place during the reporting period. Information on whether a vessel is leased is provided in the owner column data field in the report, generally with the word "lease" or "leasing" used as part of the name of the company. The most common form of ownership for the vessels shown in the report is through affiliate arrangements with a parent company, rather than leasing. In addition, information related to vessel sale and repair can be found in the information relating to US employment in the shipbuilding and repair industries during the period 2003 through 2008. We do not have data on the value of domestic repairs of vessels, but the customs value of foreign repairs of vessels amounted to \$150.926 million in 2008.
